Sevantilal Maneklal Sheth

Vs

Commissioner of Income-Tax (Central), Bombay

Civil Appeal No. 2454 of 1966

(J. C. Shah, V. Ramswami-I JJ)

22.11.1967

JUDGMENT

RAMASWAMI J. –

This appeal is brought by certificate from the judgment of the Bombay High Court dated the 22nd February, 1965, in Income-tax Reference No. 2 of 1962.

In the year 1951, the assessee, Maneklal Ujamshi (hereinafter referred to as the assessee), made a gift of 1,184 ordinary and 155 preference shares in Changdeo Sugare Mills Ltd. to his wife Bai Laxmibai. The total value of these transferred shares on the date of the transfer was Rs. 69,730. Subsequent to the transfer the company converted the preference shares into ordinary shares giving the shareholders eight ordinary shares for each preference share with the result that on December 31, 1954, Bai Laxmibai held in all 2,424 ordinary shares of the mills. Out of these 2,424 Shares, Bai Laxmibai sold 2,400 shares on August 1, 1956, for the sum of Rs. 1,54,800 resulting in capital gain of Rs, 70,860, as computed under section 12B the Income-tax Act. The whole amount realised by the sale of the shares was deposited by Bai Laxmibai fetched a yearly interest of Rs. 9,288. In the assessment of Maneklal for the assessment year 1957-58 the Income-tax Officer included the amount of Rs. 70,860, which was the profit made

> "1. Whether, in computing the total income of Maneklal for the assessment year 1957-58, the sum of Rs. 70,860 had been properly included therein in accordance with the provisions of section 16(3) (a) (iii) of the Income-tax Act, 1922 ?
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> 2. Whether, in computing the total income of Maneklal for the assessment year 1958-59, the sum of Rs. 5,104 has been properly included therein in accordance with the provisions of section 16(3) (a) (iii) of the Income-tax Act, 1922 ?
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> 3. Whether, in computing the total income of Maneklal for the assessment year 1959-60, the sum of Rs. 4,183 had been properly included therein in accordance with the provisions of section 16(3) (a) (iii) of the Income-tax Act. 1922 ?
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> 4. Whether, in computing the total income of Maneklal for the assessment year 1959-60, the sum of Rs, 5,105 had been properly included therein in accordance with the provisions of section 16(3) (a) (iii) of the Income-tax Act, 1922 ?"

By its judgment dated February 19,1965, the High Court answered the first question in the affirmative and against the assessee. It answered question Nos. 2 and 4 in favour of the assessee and

against the department. As regards question No. 3, the High Court answered it in the affirmative and in favour of the department. The reason was that counsel for the assessee did not press it or challenge the correctness of the view taken by the Appellate tribunal and accepted as correct the conclusion of the Tribunal with regard to the point invovled in that question.

Section 16(3) (a) (iii) of the Income-tax Act, 1922, provides as follows :

> "In computing the total income of any idividual for the purpose of assessment, there shall be included -
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> (a) so much of the income of a wife..... of such individual as arises directly or indirectly....
>
> (iii) from assets transferred directly or indriectly to the wife by the husband otherwise than for adequate consideration or in connection with as agreement to live apart."
>
> Section 2(6C) of the Income-tax Act, 1922, states :
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> "Income includes....
>
> (vi) any capital gain chargeable under section 12B;....."
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> Section 12B of the Income-tax Act enacts :
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> "(1) The tax shall be payable by an assessee under the head 'Capital gains' in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange, relinquishment or transfer took place :..."

With regard to the first question, Mr. Mehta put forward the argument that what comes within the ambit of section 16(3) (a) (iii) is the income from the transferred assets, which is different from the profit or gain arising from the sale of the transferred assets, or in other words, "the capital gains" from the transferred assets. It was argued, in the first place, that what comes within the ambit of section 16(3) (a) (iii) was "the income from the assets", i.e. the income which he asset produces while it continues to remain in the hands of the assessee and does not include the gain which the assessee makes by selling the asset and parting with possession of it. We see no justification for this argument. In our opinion, there is no logical distinction between income arising from the asset so transferred. The profits or gains which arise from the sale of the asset would arise or spring from the asset, although the operation by which the profits or gains which arise from the sale of the assets so transferred.

For the reasons given, we hold that the High Court had rightly answered the first question against the assessee and this appeal is accordingly dismissed with costs.

Appeal dismissed.

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